1   RECORD OF ORAL HEARING

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3   UNITED STATES PATENT AND TRADEMARK OFFICE

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6   BEFORE THE BOARD OF PATENT APPEALS

7   AND INTERFERENCES

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10   Ex parte RODNEY S. DAUGHTREY

11   _____

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13   Appeal 2007-3516

14   Application 10/697,823

15   Technology Center 2100

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18   Oral Hearing Held: November 8, 2007

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22 Before ANITA PELLMAN GROSS, JEAN R. HOMERE, and
23 JOHN A. JEFFERY, Administrative Patent Judges

24

25 ON BEHALF OF THE APPELLANT:

26

27   DENIS G. MALONEY, ESQ.
28   FISH & RICHARDSON PC
29   P.O. BOX 1022
30   MINNEAPOLIS, MN 55440-1022

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32   The above-entitled matter came on for hearing on Thursday,

33 November 8, 2007, commencing at 2:23 p.m., at The U.S. Patent and

34 Trademark Office, 600 Dulany Street, Alexandria, Virginia, before Jan

35 Jablonsky, Notary Public.

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1 JUDGE GROSS: Whenever you're ready.

2 MR. MALONEY: Yes.

3 JUDGE GROSS: You have 20 minutes.

4 MR. MALONEY: Okay. Good afternoon. Today I represent the 5appellant in appeal number 10/697,823. This invention is directed to a 6method, computer program product, and a technique for developing 7graphical user interfaces for travel planning.

8 I'd like to discuss claim 32, claims 2 through 5, 8, and 27. Claim 32 is 9directed to a computer program product for rendering a graphical user 10interface, and includes the novel elements of instructions to display a tabular 11region; having a plurality of cells arrange in plural rows and columns, with a 12cell displaying criteria of a set of travel options, and with the cells being 13controls that when selected provide a subset of the travel options that 14correspond to the respective criterion or criteria of the selected cell.

15 JUDGE JEFFERY: Counsel, let me stop you there.

16 MR. MALONEY: Sure.

17 JUDGE JEFFERY: In order to clarify a sort of a procedural matter 18here. Now, I understand claim 32 is the representative claim --

19 MR. MALONEY: Yes.

20 JUDGE JEFFERY: -- of the first claim grouping. That is one, six, 2132, 33, and 35 through 39.

22 MR. MALONEY: That's right.

23 JUDGE JEFFERY: We're designating that as representative. But I 24noticed in the briefs we argue claim one, sort of in that same grouping as 25well, and aspects of claim one. Let me just point you to that real quick. 26Page 12 of the brief.

1   MR. MALONEY: Of the appeal brief?

2   JUDGE JEFFERY: Of the appeal brief. And also, page 4 of the reply

3brief. I'm just throwing this out because it sort of struck me as I was reading

4over the briefs, keeping it straight in my mind, that claim 32 seems to be the

5representative claim, but I notice some aspects of one mentioned, as well.

6So I just wanted to clarify that, in fact, claim 32 is the one --

7   MR. MALONEY: Essentially, they're claiming the same thing. One

8is graphical user interface, and claim 32 is a computer program.

9   JUDGE JEFFERY: That's correct.

10   MR. MALONEY: The novel elements for both are the same.

11   JUDGE JEFFERY: And as I understand it, the distinction between

12claims one and 32 is claim one calls for the cells to display a summary of the

13criterion, so on and so forth, the set of travel options; but claim 32 simply

14recites a criterion. That is to say, no summary. And that's what I'm referring

15to on these respective pages of the brief.

16   MR. MALONEY: I think the word "summary" is kind of a

17superfluous word in claim one, frankly.

18   JUDGE JEFFERY: Okay.

19   MR. MALONEY: Because, essentially, claim 32 causes to display

20the criteria of a set of travel options. So the criteria that we typically use in

21all the examples is the price. So saying that the cell displays a price of $375,

22you can say that's a summary of that criteria, or the criteria itself. It doesn't

23really matter. The point of this invention is that that cell is summarizing all

24those travel options that meet the intersection of the rows and columns in the

25display.

26   JUDGE JEFFERY: All right.

1 MR. MALONEY: So whether we say the word "summary" or not, it's

2really kind of a superfluous word. That's one of the reasons why I did not

3argue claim one, because I think claim one is, in a patent sense, narrower.

4But I don't want to get hung up on the word "summary."

5 JUDGE JEFFERY: Okay. Well, the only reason that I bring that up

6is on page 12 of the brief, the word "summary" or "summarize" was used

7quite a few times.

8 MR. MALONEY: Because of claim one. Yes.

9 JUDGE JEFFERY: Because of claim one. Thank you.

10 MR. MALONEY: So essentially, this display, this tabular region, is

11the principal distinction of this invention over DeMarcken. DeMarcken is a

12patent that's also owned by the assignee of this invention. And essentially,

13DeMarcken discloses interface that pictorially represents individual pricing

14solutions, or travel options -- those being synonymous -- as a series of bars

15in a bar graph.

16 So if you look at Figure 22 or 23 of DeMarcken, you will see these

17little rectangular boxes. Each one of those boxes represents a flight segment

18between a particular period of time, and there's a larger box that's typically

19white space that represents a layover between flight segments. And that

20entire thing represents one travel option.

21 So in DeMarcken you have -- I don't recall exactly the price, but I

22think it would be maybe $1,236. There would be maybe 30 or 40 travel

23options at that price, each one of them showing the different travel segments

24at different periods of time in that particular window.

25 JUDGE JEFFERY: Well, why couldn't that display in Figure 22 be a

26tabular region? I think that's where the examiner is coming from; in that,

1you know, it's undisputed you have rows, right? I mean, each row of this

2display corresponds to price; does it not?

3   MR. MALONEY: Each row of that display corresponds to one travel

4option, one set of flights, and one price.

5   JUDGE JEFFERY: Okay.

6   MR. MALONEY: It doesn't summarize anything. And that one row

7doesn't represent a bunch of travel options.

8   JUDGE JEFFERY: Why wouldn't that summarize, though, that

9particular itinerary? I mean, that particular option that I select has, in some

10instances, several flights and several layovers, all within that one itinerary.

11   MR. MALONEY: That's the reason why I'm arguing claim 32,

12because we don't want to get hung up on this word "summarize." Okay? So

13that one row is one travel option. You select that one row. You get the

14details of that travel option in a separate window that's shown in Figure 23

15as being laid on top of that.

16   JUDGE JEFFERY: Yes.

17   MR. MALONEY: So one of the ways you may want to understand

18the distinction between what DeMarcken was trying to do and what

19Daughtrey, the appellant, is trying to do, is that DeMarcken in a sense is a

20sub-layer of what Daughtrey is doing.

21   Or to put it another way, the appellant contends that the tabular region

22is not disclosed in DeMarcken; neither the functions of it, nor the structure

23of the tabular region.

24   JUDGE JEFFERY: I understand that position.

25   MR. MALONEY: However -- if I can finish -- However, the second

26region is somewhat disclosed in DeMarcken. So the Figure 23, if you

1will -- or 22 -- in DeMarcken could be an alternative way of representing the

2travel options that result from selecting one of the cells in the tabular region.

3   So if you look at Figure 3, for example, in appellant's specification,

4there are two sections to that window. One is this tabular region, and the

5other one is a window on the bottom that displays the travel options that

6correspond to the cell that was selected. That second layer, if you will, is a

7textual representation of what is in DeMarcken.

8   But DeMarcken does not have the tabular region. It does not group

9any of those travel options. One of the problems with DeMarcken is that

10you have in DeMarcken somewhere between maybe 20 or 30 travel options,

11all at the same price.

12   JUDGE HOMERE: Counselor, let's look at Figure 22 for a second.

13   MR. MALONEY: Sure.

14   JUDGE HOMERE: Do you have Figure 22 before you?

15   MR. MALONEY: Pardon?

16   JUDGE HOMERE: Do you have Figure 22 before you?

17   MR. MALONEY: Figure 22, yes. Okay.

18   JUDGE HOMERE: I need some assistance in reading that figure,

19because I'm looking on the top of it. I see some portion that says "eight,"

20"noon," "4P." That's 8:00 a.m., noon, 4:00 p.m., 8:00 p.m., and so on and so

21forth, right?

22   MR. MALONEY: Right.

23   JUDGE HOMERE: Okay.

24   MR. MALONEY: That's time.

25   JUDGE HOMERE: Yes. I see on the right-hand side of it, I see a

26series of prices.

1   MR. MALONEY: Prices.

2   JUDGE HOMERE: Yes, of 14, 33, and so on and so forth. Okay.

3   MR. MALONEY: Well, I think they're all the same price.

4   JUDGE HOMERE: Yes. Okay. Let's say, for instance, I wanted to
5 read 377-A. How would you read that? Okay, if I was to read that as a
6 flight between 8:00 a.m. and noon that costs 1433, would that be accurate,
7 an accurate reading of that?

8   MR. MALONEY: So if you look at the first one --

9   JUDGE HOMERE: Yes.

10   MR. MALONEY: -- there is a flight segment that starts at the
11 beginning of that bar and goes to about 8:00 p.m. There is a layover at JFK.
12 That's the airport in New York.

13   JUDGE HOMERE: No, you're not answering the question I asked
14 you.

15   MR. MALONEY: Okay.

16   JUDGE HOMERE: I said 377-A. Do you see where it says there's a
17 portion here, it's between 8:00 a.m. and noon, right?

18   MR. MALONEY: Yes. That's a layover.

19   JUDGE HOMERE: Yes. Now, there's a price that corresponds to
20 that.

21   MR. MALONEY: No. The price corresponds to everything in that
22 row.

23   JUDGE HOMERE: That's right.

24   MR. MALONEY: Right.

1   JUDGE HOMERE: Yes, so for this particular entry, I would read it

2as a flight that's occurring between 8:00 a.m. and noon, and it costs $1,433.

3Is that correct?

4   MR. MALONEY: No. If you look at that first line, okay, this first

5line is basically an itinerary that has two flights in it. Those two flights get

6priced at $1,433. So in the United States and the rest of the world, there is

7what's called a "hub and spoke system" for airline travel. Very few

8destinations of significant distance are direct flights. Typically, there are

9many connecting flights involved and pricing solutions.

10   So what these represent are just flight segments of a particular

11solution, going from ESB to San Francisco. I don't know where ESB is, but

12San Francisco. You may take two or three flights to get there. And that

13price represents everything on that row. And it shows the layovers. But

14these are not individual pricing solutions.

15   For example, I came to Washington today from Boston through a

16direct flight. But I could have taken a flight from Boston to New York, and

17then from New York to Washington. I could get the same price for both

18those flights. The funny thing about travel, airline travel, as you probably all

19realize, is that sometimes you could be sitting next to someone who paid

20three times as much for his ticket as you did.

21   So I think a better way of looking at this would be to look at the

22appeal brief and look at pages 17 and 18, which show DeMarcken and

23appellant's interface. Appellant's interface, if you watch quite a bit of TV

24and you look at airline ads, is on TV. This is being used by almost the entire

25industry. Orbitz uses this; Travelocity uses this; everyone uses this. So this

26has well been established and adopted by the industry.

1   JUDGE JEFFERY: Well, counsel, I realize that. I think, though, the

2real issue in this case is how broadly these claims are drafted. I think we

3should be focusing on the claim language of claim 32 and seeing how the

4reference corresponds to what we're claiming.

5   MR. MALONEY: I believe there's no correspondence.

6   JUDGE JEFFERY: Well, and I think that therein lies the issue that

7we have before us. You know, the examiner is saying we do have a tabular

8region in Figure 22. And as best I understand the position, it is that that

9tabular region is, in effect, shown by the intersection, if you will, between

10columns formed by the time increments that you have. They look like

11one-hour increments to me in the figure. The dashed vertical lines that

12extend from the top to the bottom seem to indicate one-hour increments in

13time. And then we have a row; each row being a discrete price.

14   And so I think what the tabular region is, it seems to be the cells, if

15you will, that are formed by the respective rows and columns, and how they

16intersect each other. And you may not agree with that position but, as I

17understand it, that seems to be the main point of contention with respect to

18the tabular region.

19   MR. MALONEY: I think the main point of contention with respect to

20the tabular region by the examiner may have been that during prosecution,

21but the examiner's answer is basically trying to ignore that entire limitation

22by coming up with a definition of "tabular" that means a flat surface.

23   JUDGE JEFFERY: Well, but by your own definition, as I understand

24it, in the briefs the appellant provides a definition of "tabular," as well, on

25page 3 of the reply brief, as I recall. I turned to it myself while I was

26bringing it up.

1   MR. MALONEY: It's on page 3 in the --

2   JUDGE JEFFERY: Yes. Yes.

3   MR. MALONEY: The second paragraph.

4   JUDGE JEFFERY: The second full paragraph. You're saying
5"tabular" means "Of or arranged in a table or tabulated scheme; B, computed
6from or calculated by such a table or tables." So of or arranged in a table or
7tabulated scheme. And I think even under that definition, it seems to me that
8if you look at Figure 22 of the DeMarcken reference, we have clear columns,
9as shown clearly by the dashed lines.

10   MR. MALONEY: I would say that's one column.

11   JUDGE JEFFERY: You would say the whole table --

12   MR. MALONEY: It's a graph. DeMarcken calls it a graph, a bar
13graph. The examiner even calls it a bar graph in much of her discussion.

14   JUDGE JEFFERY: I understand. But I think what the examiner
15seems to be suggesting is the very graphical information that's depicted for
16each flight -- let's say the bar that spans several columns -- in effect, is the
17graphical representation of those cells that are filled. The bottom line here
18is --

19   MR. MALONEY: Well, I think that's taking our claims and trying to
20read our claims on a reference, and changing the entire meaning of the
21reference. This is an anticipation rejection. It's not an obviousness
22rejection. And I don't see a tabular region here. I don't think a person with
23skill in the art would consider this to be a tabular region.

24   I don't see rows, plural rows and plural columns. I don't see cells that
25when activated provide the travel options that are represented by that cell.

1That's not how DeMarcken works. And so this is an anticipation rejection;

2not an obviousness rejection.

3   JUDGE JEFFERY: I understand.

4   MR. MALONEY: Continuing, so I guess we kind of jumped ahead of

5my comments. But nonetheless, DeMarcken in our view does not show a

6tabular region. It shows a bar graph -- a series of bar graphs, actually. And

7even if we ignore for a minute the features of the tabular region, DeMarcken

8still does not anticipate claim one or claim 32, because DeMarcken doesn't

9have the functionality of the cells being controls that, when selected, provide

10a subset of the travel options that correspond to respective criterion or

11criteria of the selected cell.

12   It does not provide the travel option. The travel option is already

13provided in DeMarcken where you see it. When you click on this, you get

14the details of that travel option in text. It's the same thing. In appellant's

15invention, when you click on one of those cells in that table, which is up

16here, you get a listing of all the travel options that are summarized or are

17represented, or binned, or grouped in that cell.

18   And in addition to the fact that the structure of the claim and the

19structure of the reference are completely different, the functionality -- which

20is, I think, more important for the Board, and more important for the

21claim -- is completely different.

22   JUDGE JEFFERY: Counsel, let me ask you one question about this.

23   MR. MALONEY: Yes.

24   JUDGE JEFFERY: Particularly, with respect to the term "travel

25options." I mean, it sounds like there is no dispute as to this showing 21

1travel options in this graph, if you will. I won't say it's a tabular region. I

2know you don't agree with that.

3   MR. MALONEY: On page 22?

4   JUDGE JEFFERY: Yes. I'm sorry, Figure 22.

5   MR. MALONEY: Figure 22. Right.

6   JUDGE JEFFERY: We've got 21 total travel options, if you will.

7   MR. MALONEY: Right.

8   JUDGE JEFFERY: But within each itinerary -- each option, if you

9will -- aren't there a number of other options?

10   MR. MALONEY: No.

11   JUDGE JEFFERY: That is to say, flights --

12   MR. MALONEY: No.

13   JUDGE JEFFERY: -- that make up a particular itinerary?

14   MR. MALONEY: The way this is represented, you can only buy that

15entire bar. That price is for that entire bar.

16   JUDGE JEFFERY: But turning to Figure 23, it makes it a little easier

17to see. This particular travel option, if you will, is further broken out into

18the various legs of the journey. And each piece of that, why would that not

19be an option? I mean, am I mandated to go on that particular flight at that

20particular time, if I have that itinerary? I think not.

21   MR. MALONEY: Yes.

22   JUDGE JEFFERY: Oh, I am?

23   MR. MALONEY: Yes. You know, we're kind of dealing with the

24way that the airline industry has decided to organize itself. What we see

25here are layovers and flight segments. Together, they form what DeMarcken

26calls a pricing solution, or a travel option, that you can buy a ticket for.

1 Now, clearly, if you miss one of these flights, they will put you on

2another flight. You may end up having to pay a surcharge, or they may do it

3for nothing, depending upon how the ticket was purchased. Okay? Which I

4may have to pay a surcharge on the way home tonight, because I booked a

54:30 flight. But that's okay.

6 JUDGE JEFFERY: And that's your option.

7 MR. MALONEY: That's my option.

8 JUDGE JEFFERY: That's your option.

9 MR. MALONEY: That's right. But I'm taking just one flight. But,

10see, what I bought was the 9:00 flight down, and the 4:30 flight home. I can

11change that option, but I don't think that's what we're talking about here.

12What we're talking about is how you're going to present to a purchaser data

13that they can use to buy a ticket, an airline ticket.

14 So one way you can do it is in DeMarcken, which is my client's

15original way of doing this back in the late '90s. And you have all these

16things. You scroll down, and there's also another display here with a

17histogram -- Which is all very interesting for engineers and scientists, but

18most people don't want to deal with stuff like this.

19 So they came up with this alternative technique, which is the table.

20And in that table, in that cell, that cell basically represents all the

21information you see in these 21 travel options, at least the ones that all have

22the same price. Actually, it could represent all of them. It could represent

23from, say, 1433 -- or, I'm sorry, 1449. Any price 1449 or less. It could

24represent all those travel options by just one link in a web page, or one cell

25in a web page that's arranged in a tabular fashion.

1   I don't think "tabular" is really, frankly, that important. I looked at the

2claim. I'm saying to myself, "Well, why did you call it tabular?" Because

3someone could come up with a circular way, and you're wondering whether

4that would be a direct infringement on the claim.

5   The real idea is that you summarize all of these things by these cells.

6However, these cells are ideally suited to be in a table, because you can have

7a confluence of the two axes of that table representing something like, say,

8direct flights and airports, or direct flights and something else. None of

9which is described in DeMarcken.

10   So I think claim eight is directed to a tab table. I do not believe that

11DeMarcken described a tab table. In the appellant's invention the tab table is

12used to organize this data differently; used to organize it by, for example,

13airlines, airports, or price time -- I'm sorry, flight times. Again, DeMarcken

14has some of that functionality, but it cannot organize the data like that.

15   Claims two through five claim more specific structure of the

16underlying table. I don't need to get into all of these claims, but I think each

17one of these claims would serve to further distinguish claim one or claim 32.

18   JUDGE JEFFERY: Well, counsel, let me ask this. I do want to ask

19you about claim three.

20   MR. MALONEY: Okay.

21   JUDGE JEFFERY: Because claim three calls for an exterior column,

22causing results to be displayed in the second region, so on and so forth.

23   MR. MALONEY: Right.

24   JUDGE JEFFERY: And exterior column. Can you indicate what that

25is, exactly, in the invention? Say, in the drawings, or the spec, or both? I

26was having a difficult time making that out.

1   MR. MALONEY: Okay. If you look at Figure 3 -- Unfortunately, I

2don't have a big view of Figure 3. If you look at Figure 3, the first column?

3   JUDGE JEFFERY: First column.

4   MR. MALONEY: It says "airline"?

5   JUDGE JEFFERY: Yes.

6   MR. MALONEY: See the tab that says "airlines"?

7   JUDGE JEFFERY: Yes.

8   MR. MALONEY: Underneath that, there is a price. See that price?

9   JUDGE JEFFERY: The $376?

10   MR. MALONEY: Right.

11   JUDGE JEFFERY: Yes. Okay.

12   MR. MALONEY: Or the things underneath that.

13   JUDGE JEFFERY: Okay.

14   MR. MALONEY: That will give you all those things.

15   JUDGE JEFFERY: Why is that called "exterior"?

16   MR. MALONEY: Because if you look at the columns to the right of

17that --

18   JUDGE JEFFERY: Yes.

19   MR. MALONEY: -- I believe they are airlines, right?

20   JUDGE JEFFERY: Yes, that's correct. Yes.

21   MR. MALONEY: Right.

22   JUDGE JEFFERY: Different airlines.

23   MR. MALONEY: So you have different sections of an airline, and a

24non-stop flight.

25   JUDGE JEFFERY: Okay.

1   MR. MALONEY: That's an interior column. An exterior column is

2just a non-stop flight.

3   JUDGE GROSS: So when we talk about interior versus exterior, is it

4interior to the tabular --

5   MR. MALONEY: To the table.

6   JUDGE GROSS: To the table.

7   MR. MALONEY: Right.

8   JUDGE GROSS: So that column is not considered part of the table?

9The exterior column?

10   MR. MALONEY: No, that column is part of the table. It's just a

11column that doesn't have a row associated with it. It's a column that doesn't

12have an airline, in this particular example, associated with it. There's no

13confluence of an intersection of a row and a column.

14   JUDGE JEFFERY: It is, in effect, specifying parameters that form

15part of the data past it, I guess, in the tabular region? I mean, I'm still

16struggling: Why is it exterior? Exterior with respect to the rest of the table?

17   MR. MALONEY: It's exterior with respect to the rest of the table.

18That's correct.

19   JUDGE JEFFERY: Okay.

20   MR. MALONEY: In other words, I'm trying to distinguish the fact

21that there is not an intersection.

22   JUDGE JEFFERY: Not an intersection?

23   MR. MALONEY: Right.

24   JUDGE GROSS: And so the interior cells are the ones that have an

25intersection?

26   MR. MALONEY: That have the intersection, yes.

1   JUDGE JEFFERY: Okay.

2   JUDGE GROSS: That was another claim, where he said "interior."

3   MR. MALONEY: That first column has one-stop, non-stop, and then
4just the price.

5   JUDGE JEFFERY: Okay.

6   MR. MALONEY: The next claim we probably should go over in
7some detail, because if you don't like claim 32, you're certainly going to
8have a difficult time with claim 27. Claim 27 is, in a sense, a more general
9way of looking at claim 32.

10   Claim 27 is also directed to the computer program product, and it
11includes the novel feature of compartmentalizing -- you have to take it the
12way it's actually written in the claim, as opposed to how I pronounced
13it -- travel options into bins that form into a set of criteria and display a
14summary of the travel options in a graphical user interface according to the
15bins.

16   JUDGE JEFFERY: Counsel, what's a bin?

17   MR. MALONEY: A bin could be like this cell here.

18   JUDGE JEFFERY: Could be a cell?

19   MR. MALONEY: Could be a cell; a location in memory; something
20that is used to group travel options. It's a very common term in computer
21programming.

22   JUDGE JEFFERY: So what you're saying, it could be memory? It
23could be a memory storage location of some sort?

24   MR. MALONEY: It's not a location. It would be a series of locations
25that are somehow linked together, so that when -- Well, a bin could be
26basically buckets. Another way of looking at it is buckets.

1   It's all in a computer context, in which we are taking all the travel

2options that have a price of $376, and putting them in this one particular

3bucket; all the travel options that have a price of $1,376 for the same origin

4and destination, and putting them in a different bucket; all the travel options

5that are on American Airlines, versus Delta Airlines, and putting them in

6different buckets.

7   JUDGE GROSS: Is it more like a category, like a travel category?

8   MR. MALONEY: Well, it's a way of grouping them. It's a grouping.

9In computer science, computer programming, when you put something in

10bins or buckets, you're putting them there because you want to make some

11sort of association with those particular items. So in this situation, we are

12trying to group these things according to particular criteria, and display them

13based upon that criteria.

14   And that's also something that's not done in DeMarcken. DeMarcken

15has a thing called a "pricing graph." I don't know if you saw that or not. It's

16not really particularly directed to here. That pricing graph holds all of the

17data that's necessary to decompose -- Well, essentially, what happens is, a

18user will send a query to a travel plane system, like say Expedia or Orbitz.

19And if it's Orbitz, it will come back with a pricing graph. And the pricing

20graph, you don't see the pricing graph. It's just a data structure stored on the

21client, typically.

22   And with DeMarcken, you'd be able to extract different pricing

23solutions from that pricing graph. So DeMarcken says that for travel

24between any two points, you can literally come up with millions of ways of

25getting there -- some of which you would not want to consider. But it's a

26mathematical problem: There's millions of ways of getting there.

1   JUDGE JEFFERY: Well, let me just ask you a fundamental question

2about DeMarcken and how it would relate to this limitation in terms of

3compartmentalizing the options into bins.

4   MR. MALONEY: Right.

5   JUDGE JEFFERY: Going back to Figure 22 of the reference --

6   MR. MALONEY: Okay.

7   JUDGE JEFFERY: -- why wouldn't the prices on the right-hand side

8of the figure be considered a price bin, if you will? Aren't I taking these

9various options and indicating that they all correspond to a given price?

10   MR. MALONEY: Well, where is the summary?

11   JUDGE JEFFERY: The summary is the --

12   MR. MALONEY: There's nothing summarized. Everything is just

13listed. It's a list.

14   JUDGE JEFFERY: Would that not be the itinerary?

15   MR. MALONEY: No. No, again, I think if you want to compare the

16two, in DeMarcken you have $1,433 that seems to be the price for about half

17the travel options there.

18   JUDGE JEFFERY: Right.

19   MR. MALONEY: So DeMarcken, you know, would not summarize

20that. It just lists them all. What we do is, we summarize that. So we have

21that $1,433 as being a criterion that we're going to summarize by. So we

22have a bin that has all the travel options -- something in memory, because

23it's a computer program claim -- something in memory that ties together all

24these travel options that have $1,433 as their price.

1   JUDGE JEFFERY: But that's not what the claim -- The claim simply

2says "compartmentalize travel options into bins according to a set of

3criteria."

4   MR. MALONEY: That's what I just explained.

5   JUDGE JEFFERY: Now, but it seems to me that these various prices

6that we've labeled, each one of these itineraries would be a bin. Together,

7that whole aspect of the travel options price would be a price bin. Okay?

8Every travel option has a given price. It has been put into a price bin, if you

9will.

10   MR. MALONEY: So, well, what you're doing is you're using your

11reasoning, you're compartmentalizing -- I have to get a different word -- a

12travel option into a bin.

13   JUDGE JEFFERY: Well, let's say that the entire range of prices was

14one bin. Let's say price, just broadly, was a bin.

15   MR. MALONEY: Right. Price was a bin?

16   JUDGE JEFFERY: Price is a bin.

17   MR. MALONEY: Okay. And as DeMarcken describes, you have

18one bin at 1,433 for the first travel option, a second bin at 1,433 for the

19second travel option. You're not grouping -- I'm going to use the word

20"grouping."

21   JUDGE JEFFERY: No, let's say the whole range, every price, is all in

22the one bin of price.

23   MR. MALONEY: Well, that's not what's described in DeMarcken.

24   JUDGE JEFFERY: Well, we can certainly disagree on that point. I'm

25just throwing that out because I understand your arguments, but I return back

1to the scope of the claim language. And I think that the term "bin," by your

2own definition, sounds like it's very broad.

3   MR. MALONEY: Well, I think the client is entitled to a very broad

4claim. That does not bother me. The client is entitled to a broad claim.

5   JUDGE JEFFERY: Certainly.

6   MR. MALONEY: If you look at what the prior art was, and you look

7at what his own prior art was, for the IT software what his own prior art is,

8as well as what the travelers' used prior art was, no one ever came up with an

9idea like this.

10   This little display here can represent literally millions of potential

11travel options in a very easy, economical fashion. People can sort through

12this thing very easily, based upon airlines, based upon price, based upon

13flight times, based upon airports. Much, much easier to go through this than

14it is to go through this, for the histogram that's shown in Figure 27. Much

15easier. That's the reason why the whole industry has adopted this, and not

16this.

17   My client basically licenses the entire industry, Expedia and

18all -- well, I don't know about Expedia, but Orbitz and many of these other

19sites -- in their travel claim software. This is not a small client; it's a very

20big client. And they came up with a very unique way of representing data in

21a way which is very difficult to represent, frankly.

22   JUDGE GROSS: So when you say compartmentalizing into bins,

23you're really saying grouping?

24   MR. MALONEY: Grouping. It's another way of saying grouping.

25That's right.

26   JUDGE GROSS: Simpler way.

1   MR. MALONEY: Right. That's why I started using the word

2"grouping," because I couldn't pronounce that word. I can write it, but I

3can't pronounce it. Now, don't start laughing. That's off the record.

4   (Laughter.)

5   JUDGE GROSS: Anything else?

6   MR. MALONEY: I think that's it.

7   JUDGE GROSS: I think that's enough. Any other questions?

8   JUDGE JEFFERY: No.

9   MR. MALONEY: Thank you very much for your time.

10   JUDGE GROSS: I think we have the picture. Thank you.

11   (Whereupon, at 3:00 p.m., the proceedings were concluded.)

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